

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEMETRIUS BAILEY,

Plaintiff,

v.

RICHARD SUTTON, *et al.*,

Defendants.

No. 3:18-CV-01437

(Judge Brann)

(Magistrate Judge Mehalchick)

ORDER

MARCH 16, 2020

Demetrius Bailey filed this civil rights complaint in Pennsylvania state court, and Defendants subsequently removed the action to federal court.¹ Bailey thereafter filed a motion for default judgment, asserting that Defendants never responded to his separate “complaint of replevin.”² Magistrate Judge Karoline Mehalchick issued a Report and Recommendation recommending that this Court deny the motion for default judgment.³ Bailey has filed objections to the Report and Recommendation, asserting that default judgment should be granted because he served his complaint for replevin on Defendants.⁴

“If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report

¹ Doc. 1.

² Doc. 32.

³ Doc. 62.

⁴ Doc. 70.

or specified proposed findings or recommendations to which objection is made.’’⁵

Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.⁶

After conducting a de novo review of the Report and Recommendation, the Court finds no error in Magistrate Judge Mehalchick’s recommendation that the motion for default judgment be denied. Specifically, although Bailey submits evidence that may establish that he filed a complaint for replevin with the Court of Common Pleas of Luzerne County, there is no evidence in the record that Defendants were ever served with that complaint and, thus, default judgment is not appropriate.⁷

Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Karoline Mehalchick’s Report and Recommendation (Doc. 62) is **ADOPTED**; and
2. Bailey’s motion for default judgment (Doc. 32) is **DENIED**.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge

⁵ *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

⁷ *See, e.g., Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1304 (3d Cir. 1995) (noting that it is “error as a matter of law” to grant default judgment against a party that has not been served).